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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,239	07/11/2003	Don Tabor	02-11593	4641

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EXAMINER

MATZ, DANIEL R

ART UNIT PAPER NUMBER

3641

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/618,239	TABOR, DON	
	Examiner	Art Unit	
	Daniel Matz	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/11/03</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5, 7, and 15-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 5 and 7, claim 5 recites a connector in the preamble, and yet is directed to a kite, thus making the scope of the invention unclear. Claim 7 depends from claim 5.

Regarding claim 15, the phrase "fin-like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d). Claim 16 depends from claim 15.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 6, and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,152,481 granted to Cote et al.

Regarding claim 1, Cote et al. disclose a connector used in a kite (fig. 1) comprising: two or more legs (14) with a first end and a second end; and a junction portion (16 and 12) coupled adjacent said first end of said two or more legs, forming a saddle portion therebetween.

Regarding claim 2, Cote et al. disclose a connector comprising an orifice (18) in each second end of each of the two or more legs (14).

Regarding claim 3, Cote et al. disclose a connector wherein said orifice is configured to couple to a rod (fig. 2).

Regarding claim 4, Cote et al. inherently disclose a connector wherein the saddle portion (16 and 12) is configured to engage an airfoil portion of a kite. Note that Cote et al. disclose a connector for use in a kite frame, and thus engagement of the saddle with the airfoil portion of the kite would be typical for a kite using the connector, i.e., the airfoil of the kit would be attached to (engaged with) the connector at the top or bottom of the kite. As to limitations that are considered to be inherent in a reference, note the case law of In re Ludtke, 169 USPQ 563, In re Swinehart, 169 USPQ 226, In re Fitzgerald, 205 USPQ 594, In re Best et al., 195 USPQ 430, and In re Brown, 173 USPQ 685, 688.

Regarding claim 6, Cote et al. disclose a connector wherein the rod exerts a force on the connector opposing a force exerted by the airfoil. In a typical kite assembled with the connector, a string would be attached to the rod (22) connected to the saddle portion of the connector, and the airfoil would thus apply a force to the saddle (16) tending to collapse the kite away from the string. The rod (20) would exert a

force opposing the force tending to collapse the kit in order to maintain the airfoil shape of the kite and allow the kite to fly.

Regarding claim 8, Cote et al. disclose a flexible connector (col. 5, lines 13-23), e.g., made of rubber, nylon, or polyethylene.

Regarding claim 9, Cote et al. disclose a connector that is symmetrical about a central axis (fig. 1).

Regarding claim 10, Cote et al. disclose a connector used in the construction of a flying toy (a kite).

Regarding claims 11 and 13-14, Cote et al. inherently disclose a kite comprising the claimed features, as discussed above regarding claims 1-4, 6, and 8.

Regarding claims 12 and 16, Cote et al. disclose a pole (22) which would typically be coupled to the airfoil at a side opposite the side engaged to the saddle portion of the connector.

Regarding claim 15, as best understood, Cote et al. inherently disclose a kite comprising the claimed features, as discussed above regarding claims 1-4.

Regarding claim 17, the claimed method for assembling the kite would be inherent in the disclosure of Cote et al. as discussed above regarding claims 1-4.

Allowable Subject Matter

5. Claims 5 and 7 would be allowable if rewritten ^{as a combination} to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Matz whose telephone number is (703) 306-4164. The examiner can normally be reached on Mon-Thurs, alt Fri 7:30am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on (703) 306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DM



MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER